

In the High Court of Judicature at Madras

Dated:19.06.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and

The Hon'ble Mr. Justice V. DHANAPALAN

Habeas Corpus Petition No.189 of 2006

Ramesh

.. Petitioner

vs.

1. The State of Tamil Nadu
rep. By its Secretary to Government
Prohibition & Excise Department
Chennai 600 009.

2. The Commissioner of Police
Greater Chennai
Chennai 600 004.

..Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of writ of habeas corpus as stated therein.

For petitioner : Mr. V. Sivakumar
For respondents : Mr. M. Babu Muthu Meeran
Addl. Public Prosecutor

ORDER

(Order of the Court was made by P. SATHASIVAM,J.,)

The petitioner by name Ramesh, challenges the impugned order of detention dated 12.12.2005, detaining him as "Goonda" under Section 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (in short "Tamil Nadu Act 14 of 1982").

2. Heard both sides.

3. At the foremost, learned counsel for the petitioner raised a contention that without proper order or remand from the competent Magistrate, the detaining authority passed an impugned order of detention, which vitiates the ultimate order passed by him. While elaborating the above contention, the learned counsel for the petitioner submitted that in the order dated 25.11.2005, the learned Magistrate No.II, Poonamallee on

production of all the seven accused at 6.00 p.m. after recording that no complaint against police, remanded all of them till 09.12.2005. There is no dispute with regard to the same. However, according to the learned counsel for the petitioner, on 09.12.2005, A.6 and A.7 alone were produced before the Judicial Magistrate No.II, Poonamallee and others were not produced. The learned Magistrate extended the remand till 23.12.2005. By pointing out the said order, it is contended that the detenu being A.3 and in the absence of material to show that he was produced before the Magistrate, it is presumed that the remand was not extended beyond 09.12.2005. He further contended that the reliance on the special report which is available at page 110 of the paper book, in the absence of an order from the Magistrate extending the remand beyond 9.12.2005, it cannot be claimed that the detaining authority was possessed with all the required materials and arrived proper conclusion before passing of the impugned order of detention. In support of his contention he relied on the decision of the Supreme Court in the case of Kirit Kumar Chaman Lal Kundaliya vs. Unions of India reported in 1981 SCC (Cr1.) 471.

4. On the other hand, learned Additional Public Prosecutor by placing relevant records submitted that there is no dispute with regard to order passed by the Judicial Magistrate No.II, Poonamallee on 25.11.2005, remanding all the accused till 09.12.2005. He also contended that even though there is no specific order by the learned Magistrate with regard to detenu, in view of the fact that the remand was also extended in the case of detenu along with others till 23.12.2005, the details furnished by the Sponsoring authority in the form of special report are sufficient for taking decision by the detaining authority. According to him, in such circumstances there is no flaw in the impugned order of detention. He also relied on several earlier orders passed by the Division Bench of this Court and he produced all those decisions in the form of typed set.

5. Coming to the said contention, we verified page 96 and 98 of the paper book. It is true that the order dated 25.11.2005 of Judicial Magistrate No.II, Poonamallee shows that all the accused were produced and all of them were remanded till 09.12.2005. In the subsequent order dated 09.12.2005, shows that A.6 and A.7 were produced and all others not produced. Further, learned Judicial Magistrate extended the remand till 23.12.2005. It is not in dispute that the detention order was passed on 12.12.2005. Now, we have to see that on the date of passing of the detention order the detenu - A3/petitioner was in remand or not. The other document relied on by the detaining authority is a special report dated 09.12.2005, which is available at page 110 of the paper book. A reading of the special report shows that the detenu and others were initially remanded till 09.12.2005 and thereafter, their remand was extended till 22.12.2005. Though in the absence of specific order in so far as the detenu extending his remand till 22.12.2005, the detaining authority heavily relied on the special report and after satisfying himself that the detenu was in remand and considering all other materials, passed the impugned order of detention.

6. Though learned counsel for the petitioner relied on the decision of the Supreme Court (1981 SCC (Cr1.) 471 cited supra), verification of the said decision amply shows that it relates to supply of relied on documents, which is evident from para 12 of the judgment. In our case, it

is not in dispute that copy of the remand order and the special report were supplied to the detenu along with the grounds of detention. In such circumstances, we are of the view that the said decision is not helpful to the case on hand.

7. On the other hand learned Additional Public Prosecutor has relied on the following unreported decisions:

- "1. HCP.No.716 of 1999 dated 25.10.1999 (Ramammal vs. The Commissioner of Police, Greater Chennai.);
2. HCP.No.503 of 1999 dated 01.11.1999 (Seeni @ Srinivasan @ Chappai Mookku Srinivasan @ Prem Ravikumar vs. The Secretary to Government, Prohibition and Excise Department, Chennai 9.);
3. HCP.No.718 of 1999 dated 01.11.1999 (Murugan vs. State of Tamil Nadu);
4. HCP.No.483 of 1999 dated 03.01.2000 (Govindarajan vs. State of Tamil Nadu);
5. HCP.No.1776 of 1999 dated 27.04.2000 (Vajravel vs. State of Tamil Nadu);
6. HCP.No.1882 of 1999 dated 26.06.2000 (Muniyandi vs. State of Tamil Nadu);
7. HCP.No.1978 of 1999 dated 26.06.2000 (Prakash vs. Government of Tamil Nadu); and
8. HCP.No.24 of 2000 dated 01.08.2000 (P. Saraswathi vs. Commissioner of Police, Greater Chennai, Chennai)."

The analysis of the above decisions show that even in the absence of copy of the remand extension order, if there is a material to show that the detenu was in remand / in Central Prison, on the date of passing of the detention order, the detaining authority is free to pass an order depending on other materials. The decisions also show that the special report of the Sponsoring authority is a relevant document. It further shows that the Sponsoring authority is competent to swear an affidavit about the last remand extension.

8. As rightly pointed out from the special report, which was furnished to the detenu it could be seen that the detenu was under remand from 25.11.2005 till 23.12.2005 and the detention order was passed on 12.12.2005. As observed earlier, though in the order dated 09.12.2005 there is no specific reference to the detenu/A3, in view of the categorical information furnished in the special report dated 09.12.2005, pointing out that the remand order in the case of detenu / A3 was also extended till 23.12.2005 and in view of series of decisions referred to by the learned Additional Public Prosecutor, we agree with the stand taken by the learned Additional public Prosecutor. We are also of the view that the detaining authority was possessed with required details, particularly of the fact that the detenu was in remand on the date of passing of the order, which is also evident from special report dated 09.12.2005, we are unable to accept the contention raised by the learned counsel for the petitioner.

9. Yet another contention was raised by the learned counsel for the petitioner is that the Advisory Board did not consider the representations made by the detenu. As against the said contention, learned Additional Public prosecutor has placed the entire records. A perusal of the decision taken by the Board clearly shows that Advisory Board after perusal of the grounds of detention, report of the detaining authority and the connected records as well as the representation of the detenu's wife, unanimously opined that there is sufficient cause for detention of the detenu by name Ramesh. In such circumstances, we are unable to accept the second contention also.

Except the above said contentions, no other point was urged. Accordingly, we do not find any valid ground for interference; hence, this petition is dismissed.

Kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
Prohibition & Excise Department
Chennai 600 009.
2. The Commissioner of Police
Greater Chennai
Chennai 600 004.
3. The Public Prosecutor,
High Court, Madras.

1 cc To Mr.V.Sivakumar, Advocate, SR.25546.

Order in
H.C.P.No.189 of 2006

MKJ (CO)
RVL 29.06.2006